

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK

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In re:

Case No.: 23-30672-5-wak

Joseph A. DiMino, Jr.,

Chapter 13

Debtor.

Hon. Wendy A. Kinsella, C.U.S.B.J.

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**MOTION OF SERVICEMAC, LLC TO FILE PROOF OF CLAIM
FOR POST-PETITION MORTGAGE LOAN ESCROW DEFICIENCY**

ServiceMac, LLC (“ServiceMac”), as servicer for Movement Mortgage, LLC (“Movement Mortgage”), by and through its undersigned counsel, hereby moves for an Order of the Court allowing for the filing of a proof of claim for mortgage escrow deficiency for funds advanced and projected escrow shortage, in the instant chapter 13 case (the “Case”), and in support of thereof states as follows:

1. The chapter 13 case of Joseph A. DiMino, Jr. (“Debtor”) was commenced on September 20, 2023 (the “Case”).
2. Movement Mortgage is the holder of a prepetition mortgage loan (the “Mortgage Loan”) that is secured by property of the Debtor located at 4815 Lepinske Farm Place, Clay, New York 13041 (the “Property”).
3. The Debtor’s filed Schedule A lists the Property as being owned by the Debtor, but that his estranged spouse, Jordana D. DiMino (“Jordana”) resides there with their children.
4. The Debtor filed a proposed chapter 13 plan [ECF No. 4] (the “Plan”) that provided for the continued servicing of the Mortgage Loan and that the loan was current as of the Plan filing. The Plan has a 60 month term.

5. The Court confirmed the Plan by Order entered on January 5, 2024 [ECF No. 18] (the “Confirmation Order”).

6. The Plan provides that Debtor is paying one-half (1/2) of the monthly mortgage payment under a child support agreement with Jordana, which monthly payment amount is stated to be \$2,700.00. Thus, Debtor would be contributing \$1,350.00 towards the monthly mortgage payment.

7. Jordana filed a chapter 7 petition on August 29, 2023 in this Court, case no. 23-30603-5-wak. Jordana received a discharge in her case on November 27, 2023. Jordan listed the Property as being owned by her in the filed Schedule A/B. She did not list the Mortgage Loan as a debt in Schedule D or E/F.

8. The Confirmation Order provides with respect to the Mortgage Loan that the Debtor shall pay one-half of the monthly mortgage payment, and that such payment to be made directly by the Debtor and not through the Trustee.

9. Though the Mortgage Loan has been serviced by the Debtor and Jordana through this “split payment” arrangement, Jordana received a discharge in her chapter 7 case, so, she does not have any personal liability on the Mortgage Loan.

10. Upon information based on the motion filed by the Debtor on March 20, 2024 for partial stay relief to permit a matrimonial action to proceed in state court [ECF No. 25], Debtor and Jordana will be seeking to dissolve their marriage. Such a proceeding may have an impact on the relative obligations of Debtor and Jordana with respect to the Mortgage Loan.

11. ServiceMac’s records for the Mortgage Loan indicate that monthly payments of \$2,718.00 have been received since the contract payment due as of November 1, 2023, and previous to November 2023, the amount received in October 2023 and September 2023 was \$2,653.17 and

\$2,691.73, respectively. However, the actual monthly mortgage payment, inclusive of principal, interest and escrow for real estate taxes and insurance is \$3,731.92 (principal: \$762.41, interest: \$992.98, escrow: \$1,976.53).

12. The current total balance due on the Mortgage Loan is approximately \$397,953.

13. The difference between the monthly payment amount that Debtor and Jordana remit, and the actual total PI&TI has accrued an amount for escrow due of 411,186.71, comprised of escrow advances made of \$6,494.37 and an escrow shortage projection of \$4,692.34, for a total due of \$11,186.71 (the “Escrow Deficiency”).

14. Assuming Debtor and Jordana begin making the correct and current monthly payment of \$3,731.92, the Escrow Deficiency would not grow.

15. The Debtor and Jordana do need to address the Escrow Deficiency. This could be accomplished by increasing the current monthly payment amount so as to reduce the Escrow Deficiency to zero over a reasonable period of time; or more likely so as to ensure the full payment before the completion of the Plan, have Debtor increase his plan payments to the Chapter 13 Trustee for the remaining term of the Plan to allow for the Trustee to make cure payments over the plan term such that at the completion of the Plan the Escrow deficiency would be satisfied. This would require the filing of a proof of claim.

16. Annexed hereto as Exhibit “A” is a pro forma worksheet for a proof of claim that would be filed. Also annexed hereto as Exhibit “B” is a spreadsheet for the Mortgage Loan that provides information for the period starting September 1, 2023 on the total due under the loan, monthly payments made, the amounts due, advances made and suspense balance. Finally, annexed as Exhibit “C” is an Account History for the period from September 1, 2023 that indicates escrow advances made, as well as what the components of the current total monthly payment are.

17. The amounts due for the Escrow Deficiency are post-petition in nature and thus, with the Mortgage loan not having been in pre-petition arrears, a proof of claim was not filed pre-confirmation.

18. Accordingly, ServiceMac requests authority to file a proof of claim in the Case for the Escrow Deficiency so that the Trustee can know what amount will be needed for distribution under the Plan to satisfy the Escrow Deficiency over the remaining term of the Plan.

WHEREFORE, Service Mac respectfully requests this Court enter an Order authorizing the filing of a proof of claim for the escrow Deficiency.

Date: Westbury, New York
April 16, 2024

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